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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 926

JOSEPH S. CHINN
Petitioner

v.

IDA V. CHINN
Respondent

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Respondent opposes the granting of a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered herein on January 16, 1958, for the reason that there is no error, and further because no question of general importance is involved and no question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States has been raised.

QUESTIONS PRESENTED

1. Whether the United States District Court for the District of Columbia has the right to incorporate into its final judgment a property agreement approved by the parties and their counsel at the end of a divorce trial.

2. Whether the District Court under its statutory power in a divorce proceeding to award property to the party entitled thereto, may with the consent of the party so entitled, include a minor child of the parties in the award.

STATUTE INVOLVED

Title 16-409 D.C. Code (1951 Ed):

Upon the entry of a final decree of annulment or divorce a vinculo, in the absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and the court, in the same proceeding in which such decree is entered, shall have power and jurisdiction to award such property to the one lawfully entitled thereto or to apportion the same in such manner as shall seem equitable, just, and reasonable. (Mar. 3, 1901, ch. 854, 974a, as added Aug. 7, 1935, 49 Stat. 540, ch. 453, 3.)

STATEMENT

Respondent, Plaintiff below, filed suit in the United States District Court for the District of Columbia, for an absolute divorce on the grounds of five years voluntary separation, and asked for custody of the minor child of the parties, support for the child and herself, her share of the two parcels of real property owned by her and Petitioner as tenants by the entirety, and court costs and attorney fees. There was lengthy testimony at the trial that one of the parcels, 209 44th Street, N. E., cost $8,500.00 and the other, 25 45th Street, N. E., cost $6,500.00. There was further proof that Respondent had contributed equally with Petitioner to the payment of the purchase price of both parcels.

When all of the testimony was in, the trial was recessed until the following morning. In the interim, the

trial judge saw opposing counsel in chambers. When the trial resumed, he announced that he found for Respondent and granted her the divorce, custody of the child, and $15.00 monthly for support of the child. He awarded to each of the parties one of the parcels.

Petitioner was present throughout the trial and consulted frequently with his lawyer. Petitioner's own lawyer reminded the trial judge that the parties and their counsel had agreed, at the trial's end, to the inclusion of the minor child in the award of 209 44th Street, N. E. to Respondent. (R. Appendix, p. 12).

The United States Court of Appeals for the District of Columbia approved the award as proper in these circumstances.

REASONS FOR DENYING THE WRIT

At each step of Petitioner's continuing effort to avoid removal from the premises where he is free to pursue his harassment and persecution of his former wife, Petitioner has raised new questions.

Conceding now the validity of the Judgment for Absolute Divorce filed on December 3, 1956, Petitioner confines himself to a complaint concerning the trial court's award of one of the two parcels of real property jointly owned by the parties to Respondent and the minor child of the parties. But Petitioner refers to the award as if made to the child alone. At no point in his argument as to the reasons why the writ should be granted, nor in the legal question he presents to this Court, does Petitioner refer to the fact that the property was awarded to the *wife* and the minor child.

The proper legal question, therefore, is whether the award of the property, located at 209 44th Street, N. E., to the Respondent and the minor child is improper, as beyond the power of the Court, when it is conceded that

the Court had statutory authority to make such an award to the wife alone.

There are two reasons why the award of the trial court should stand.

The first is that Petitioner consented to the award at the time it was made. He was present in Court throughout the trial. He had the advice and counsel of a lawyer of his own choosing. His lawyer took an active part in working out the details of the decree (Petition, p. 4) and consulted with Petitioner about the terms at every step of the proceedings. The record shows that Petitioner has been represented by four different lawyers in this case. The agreement which has been relied upon by Respondent and approved by the Court of Appeals refers to the agreement reached by the parties and counsel at the end of the trial and incorporated in the judgment. The judgment bears the signature of Petitioner's counsel. Such agreement does not have to be in writing and no claim has been made by Respondent that there existed an antenuptial or postnuptial agreement prior to the trial. Petitioner's reference to a lack of agreement (Petition p. 4) and his excerpt of testimony (R. 25) are completely out of context in this respect. The testimony quoted by Petitioner refers to the settlement of the marital difficulties, and the purpose of its introduction at the trial was to show whether or not there had been a voluntary separation between the parties for five years.

The second reason why the award of the trial court should stand is that there is ample evidence to sustain a finding that Respondent was entitled to the property under Title 16-409 D.C. Code (1951 Ed.) (Petition, p. 2). Respondent worked in a business, owned in her name with Petitioner for years and both parcels of real property owned by them were paid for out of the proceeds of this business. (R. Appendix, pp. 6, 7, 8, 9). The trial court has, under Title 16-409, the right to exercise

a sound judicial discretion in adjusting the property rights of the parties. (*Slaughter* v. *Slaughter*—171 F. 2d 129, 83 U.S. Appeals, D. C. 301, 1948).

The person whose right and title have been diminished by the award is Respondent, not Petitioner. Her consent to the inclusion of the child in the conveyance is sufficient to authorize it. The Court found for Respondent (Plaintiff below) and awarded her the property in question. *Petitioner's own counsel reminded the trial judge that it had been agreed that the child was to be included.* (Petition, p. 4; Appendix, p. 12).

Petitioner now objects to his own contribution to the fashioning of the decree. Judicial proceedings would mean very little in the determination of controversies if the parties thereto could be permitted to upset judgments with every second thought.

CONCLUSION

For the reasons stated, Respondent submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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